

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

BENJAMIN R. GEER, JR.,)	
)	
Petitioner,)	
)	Case No. 1:06-cv-38-SJM-SPB
v.)	
)	
SUPERINTENDENT NISH, <i>et al.</i> ,)	
)	
Respondents.)	

MEMORANDUM ORDER

This petition for writ of habeas corpus was received by the Clerk of Court on February 17, 2006 and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

The Magistrate Judge's Report and Recommendation, filed on December 3, 2010 [33], recommends that the petition for writ of habeas corpus be denied and that a certificate of appealability also be denied. The parties were allowed fourteen (14) days from the date of service in which to file objections. Service was made on Petitioner by certified mail at SCI Waymart, where he is incarcerated, and on Respondents. Petitioner's objections [34] were filed on December 22, 2010. After de novo review of

the petition and documents in the case, together with the Report and Recommendation and objections thereto, the following order is entered:

AND NOW, this 6th day of January, 2011;

IT IS ORDERED that the Petition for Writ of Habeas Corpus be, and hereby is DENIED. Inasmuch as jurists of reason would not find it debatable whether the instant petition is untimely under 28 U.S.C. § 2244(d)(1) and/or whether the Petitioner has made a substantial showing of the denial of a constitutional right, IT IS FURTHER ORDERED that no certificate of appealability shall issue.

The Report and Recommendation of Magistrate Judge Baxter dated December 3, 2010 [33] is adopted as the opinion of the Court.

s/ Sean J. McLaughlin

SEAN J. McLAUGHLIN
United States District Judge

Cm: All parties of record.

U.S. Magistrate Judge Susan Paradise Baxter